JOANN KARBIWNYK,
Plaintiff,
vs.
R. J. REYNOLDS TOBACCO COMPANY
Defendant.

Wednesday, October 29, 1997
Judge Michael Weatherby
Courtroom 2

APPEARANCES:
NORWOOD WILNER, Esquire, GREGORY H. MAXWELL, Esquire, Attorneys for Plaintiff.

THEODORE M. GROSSMAN, Esquire, JAMES E. YOUNG, Esquire, E. C. DEENO KITCHEN, Esquire, and SHARON JOHE, Attorneys for Defendant.

P R O C E E D I N G S

October 29, 1997 12 p.m.

- - -

(The following proceedings were reported by Shelli Kozachenko:)

(The following proceedings were held outside the presence of the jury:)

THE COURT: I understand we're still missing a juror.

(Off the record from 12:00 to 12:07 p.m.)

THE BAILIFF: They're all here now, Judge.

THE COURT: All right. Are you ready to proceed, Mr. Grossman?

MR. GROSSMAN: Yes, I am, Your Honor.

THE COURT: Let's give her a chance to put her coat down and all. All right, Mr. Demps.

(The following proceedings were held in the presence of the jury:)

THE COURT: Be seated, ladies and gentlemen. Mr. Grossman.

MR. GROSSMAN: Thank you very much, Your Honor. May it please the Court?

THE COURT: Absolutely.

MR. GROSSMAN: Dr. Townsend, Mr. Donahue, Mr. Wilner, Mrs. Karbiwnyk, ladies and gentlemen,

we've been together a long time. It's

http://legacy.library.ucsf.edu/tid/zjr07a00/pdf
Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

three-and-a-half weeks since I first got a chance to talk to you in jury selection. I've been paid for these three-and-a-half weeks; you've been doing it as a matter of service. I can't tell you how much we all appreciate it. I know how hard this has been for you and how much of an inconvenience, and I know how much all of you have been paying attention and that's all we can ask for.

Now, when we began this case you were told in the beginning, you're the judges of the facts. This is about to be in your hands. For myself, of course, being away this long from -- I told you in the beginning I come from Cleveland. Being away so long from my family has of course been difficult, but I will always cherish this. This has been a very big moment for me and I'm sure that -- I know the same goes for Jim and for Diane and Deeno.

Now, when we began this case you were told that this is a private lawsuit for money damages. It's not a legislative assembly, it's not a class action, it's not anything of the kind. I told you that, Mr. Wilner told you that,

Judge Weatherby told you that. But much of the evidence that you've heard and some of the argument that you've heard has nothing to do with Mrs. Karbiwnyk, the plaintiff who is suing for damages, or with Reynolds, the defendant. It has to do with other companies and other things.

In the time that I have for you -- and I hope not to use my whole three hours. When I was a kid my father told me that to be immortal you don't have to be eternal, and so I'll do my best not to use my whole three hours.

From the beginning we've tried to focus the discussion on the parties in this case and the facts of this case, and today I'll be talking, I think, a good deal about Mrs. Karbiwnyk's testimony, which I must say you didn't hear a lot about from Mr. Wilner, and Dr. Townsend's testimony because he was the vice president of Reynolds, representative of Reynolds who was here before you and who you had an opportunity to meet, to hear, and to assess.

The plaintiff argued that the question here isn't whether Mrs. Karbiwnyk was negligent, and I agree with that. I agree. No one is saying that she made -- certainly we're not saying that she

made the wrong decision in deciding to smoke or in deciding to continue to smoke. The question of whether it was a right or a wrong decision isn't the question before you, but what we are saying and what Mrs. Karbiwnyk's own testimony proved is that she's not in a position to say that she wasn't warned. That's a very different issue. They've brought a warning claim. They

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Digitized by the Legacy Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/zqxl0001

have to show, among many other things, that she's in a position to say that she wasn't warned. I'll be going into detail about the contrary of that.

As you recall in 1954 when Mrs. Karbiwnyk was a junior in high school, on a dare she took a cigarette. Before then she was told by her mother, who was a nurse's aide, by her school, which had a pretty strong antismoking program, and on the streets that cigarettes were, in her words, addictive, that they produced a nicotine fit, and that they were cancer sticks. But she smoked -- as she said, she made a choice to smoke and she did.

Well, you might say, well, those weren't such strong messages, but in 1964 she heard the surgeon general. She heard that the surgeon

general said, it's her testimony, that cigarettes caused cancer and shortened life. She believed the surgeon general; she believed him fully. In fact, she said she never listened to anything the cigarette companies said, and I'll be coming to that. But she made a choice to smoke, to continue to smoke, to smoke the same cigarettes, not to look for other cigarettes, not to cut down, not to try to stop, not to even make an attempt to stop because she wanted to smoke, because she enjoyed it, because it helped her keep her weight off, and because she just liked it.

1966 warnings went on the packages and, again, she said they only told her what she already knew, that cigarettes caused cancer and could shorten lives, and she decided to continue smoking and not to change her smoking conduct. 1970 warnings went on the packages that are absolutely conclusive as a matter of law. They cannot be questioned. The quality of those or the adequacy of those warnings cannot be questioned as a matter of law. But, again, she didn't make any changes in her smoking conduct, and that was her choice and that's okay. But

when you make a choice, it doesn't entitle you to bring a lawsuit later.

Now, Mrs. Karbiwnyk, I hope when I questioned you that you felt that I was fair with you and (inaudible). I certainly tried to be and (inaudible).

THE COURT: Mr. Grossman, the court reporter can't hear you.

MR. GROSSMAN: Oh, I'm sorry. I was just saying to Mrs. Karbiwnyk that I hoped that I was fair with her when I asked her the questions.

And Mrs. Karbiwnyk has gone through a lot of misfortune. We all know that. She's had two cancers. The cancer of her lungs was treated with radiation and chemotherapy and is now

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

fortunately in remission. The cancer of her uterus was treated with surgery and that too is fortunately in remission, and from a financial standpoint, fortunately, she testified to you that all of that was covered by insurance. From other standpoints nothing can be fully covered. We all understand that. But fortunately for her, both of the cancers are in complete remission for the time being at least. She is jogging, she is active, and we hope that will continue forever in

terms of a normal life span.

We know that she has to monitor the uterine cancer every three months and similarly the lung cancer every three months, and we know that for the time being at least, she's totally clear of both. But these were misfortunes, no question about it, and every one of us will suffer misfortunes in our lives. Our parents die, we get sick, we die.

Sometimes it comes from things that no one can point to. Sometimes it comes from choices that we make, but if your husband or father or wife dies of a heart attack after eating steaks and buttermilk all their lives, you don't sue the dairymen and the butchers. If someone dies of cirrhosis, you don't sue the alcohol company, and there's a reason for that. Because people in this society are given an opportunity to choose and they make their choices.

Every one of us makes choices involving things that we understand could be risks to ourselves, every one. We make different choices. Often we say we hope it won't happen to me and very often we're right. Sometimes we're not, but in our society we're allowed to make

choices. That's what it's all about, and Mrs. Karbiwnyk made a choice. We can't turn every case of cancer or every heart attack or every case of cirrhosis into a lawsuit. That's not what our society is about.

Now, you were shown a verdict form before, and I will show you the same verdict form because my understanding and plaintiff's understanding of what this verdict form is is the same. It's going to be the same verdict form. You're going to be asked two basic questions of liability. There was something that was left out when you were shown this before. In both of these questions, was there negligence on the part of defendant, R. J. Reynolds Tobacco Company, which was a legal cause of loss, injury, or damage? Were the Winston and Salem Lights -- this will be or. Were the Winston or Salem Light cigarettes manufactured by R. J. Reynolds Tobacco Company unreasonably dangerous and defective and a legal cause?

Legal cause is a specially defined term.

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

23 You're going to get a separate instruction about
24 what a legal cause is. A legal cause is
25 something that meets the so-called but-for test.

1 I'm going to put this up for you. Steve, maybe
2 we can put this up on the Elmo. Let me read it
3 to you because this will be at the center of your
4 deliberations. "A defect in a product is a legal
5 cause of loss, injury, or damage if it directly
6 and in natural and continuous sequence produces
7 or contributes substantially to producing such
8 loss, injury, or damage so that it can reasonably
9 be said that but for the defect, the loss,
10 injury, or damage would not have occurred."
11 In other words, there can be more than one
12 cause, more than one legal cause of an injury,
13 but it has to be essential. It has to be
14 something that never would have occurred without
15 it. That's the test. It's like I wouldn't be
16 here but for my parents. I wouldn't be here
17 without them. It has to be essential. It has to
18 be necessary.
19 That's the test that the plaintiff has to
20 prove in this case and the plaintiff has to prove
21 it by the greater weight of the evidence.
22 Remember, they have the burden of proof, and the
23 burden of proof, you'll be instructed, is the
24 greater weight of the evidence. There were a
25 number of things that were said this morning in

1 the plaintiff's opening that said what is this?
2 Well, we don't know. What is this? Well, we
3 don't know. We don't know is not something that
4 a plaintiff can say. We don't know can never be
5 the test of the greater weight of the evidence.
6 It's their burden of proof.
7 Now, what the plaintiff has to prove here,
8 the legal cause, the but-for test, is essentially
9 three things. First of all, they have to prove
10 that Mrs. Karbiwnyk would never have gotten her
11 cancer, more likely than not, but for the Winston
12 and Salem Light cigarettes that she smoked.
13 That's just a matter of cause. Lawyers call it
14 cause in fact. But there's more than that.
15 Cigarettes are a legal product; we all know
16 that. And the fact that you're run over by a
17 truck doesn't mean, unless you can pass the
18 but-for test, that you can get damages from the
19 truck manufacturer. It has to come from a defect
20 in the product, not just from the product but
21 from a defect.
22 Here are the two instructions and here are
23 the two forms that you need. It has to be
24 negligence, in this case warning, lack of warning
25 on behalf of Reynolds that was the legal cause,

1 or it has to be a product defect, unreasonably

http://legacy.library.ucsf.edu/tid/zjt07a00/pdf Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

dangerous and defective and a legal cause, and you'll be instructed and we'll discuss later that that refers to the design of the product. Not to the question of whether they're cigarettes, but whether the specific design of the Winstons and the Salem Light was the legal cause, whether if there were a different design, her injury, her illness would have been averted.

I can tell you now, and I'll discuss in greater detail, that Mrs. Karbiwnyk has not proved her case by the greater preponderance of the evidence, by the greater weight of the evidence, that she met any of the legal cause requirements. And what I want to begin with is the pure question of cause. Let see if she's -- if she and her lawyers have met even the most elemental, the most fundamental test of whether her personal cancer, her case of cancer, was legally caused by the Winston and Salem Light cigarettes that she smoked, whether in the absence of those cigarettes, without those cigarettes, they've proved that she wouldn't have gotten the cancer.

Now, you heard from every medical expert and

statistical evidence expert in this case that every kind of lung cancer is found both in smokers and nonsmokers. It's found more often in smokers, but it's found in every kind of person; every kind of lung cancer, every kind of person, whether they smoke or not. It's what's called -- it's not a necessary -- smoking is not a necessary cause. You heard that from Dr. Feingold; you heard that from Dr. Roggli; you saw the statistics from Dr. Wecker. That's not in controversy. That is not disputed. The plaintiffs argue though, essentially, that if somebody ever smoked and later got lung cancer, then the lung cancer must come from the smoking. They've got nothing else to tie it together, and I'll go into that in greater detail in a minute, but nothing else.

Now, let me show you a board that describes Mrs. Karbiwnyk's exposures that were discussed in this case. First of all, let's talk about environmental exposures. You saw Dr. Thomas's testimony. By the way, Dr. Thomas was with the National Academy of Sciences, which other than the Nobel prize, other than the Nobel committee, is the highest level of science in the world. He

was president of the American Board of Toxicology.

Dr. Thomas testified that Charleston, West Virginia, which was in that narrow valley with the smoke stacks from Union Carbide, was so polluted in the time when Mrs. Karbiwnyk grew up that they had monitoring stations all over the city. They had one on her own high school, if

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Document hosted at industrydocuments.ucsf.edu/docs/zqxl0001

you remember. They had another monitoring station in her neighborhood, and those monitoring stations showed levels of chemicals in the air that are many, many times those that are found anywhere in the United States today, anywhere in the United States. Under the Clean Air Act it's come way, way down, as he told you. But the levels were 10 and 20 times higher than in the surrounding area.

As you also heard from Dr. Feingold as well as Dr. Thomas, Jacksonville, Florida, for reasons that nobody knows, has the highest lung cancer rate in the United States. Nobody knows the reason but everybody knows it has the highest rate. Now, Mrs. Karbiwnyk had environmental exposures and the -- Dr. Thomas also testified that 5 to 10 percent of lung cancers can be

attributed to environmental exposures, even greater numbers for certain areas. It was pointed out to you that in recent reports the EPA has reduced that number to 1 or 2 or 3 percent, but that's based on current air, not this kind of air and not based upon Jacksonville, which has a different rate than the rest of the country.

Mrs. Karbiwnyk had environmental exposures throughout her life, and we haven't included the Philadelphia period. Philadelphia's a big city, it's polluted, but it doesn't have special risks like Charleston did and Jacksonville.

Alcohol, you heard differing testimony on the amount of alcohol that Mrs. Karbiwnyk had. She said two glasses a night; her former husband said a great deal more. In either event she had far more alcohol than necessary under the epidemiological studies, which are just counting studies, the same as they are with cigarettes -- but under the epidemiological studies, she had far more than enough alcohol to be a risk factor for lung cancer. Some of those studies show that it's three times, some show it's five times greater among people who drink alcohol in that rate and people who don't.

Hormonal therapies, Mrs. Karbiwnyk had hormone therapy for a very extended period in her life, since the 1960s, all the way up to the present. Now, hormone therapies have been tied to the kinds of lung cancer that Mrs. Karbiwnyk was diagnosed with. And I'll be coming to Dr. Gould's testimony in a minute about the well differentiated neuroendocrine, but whether it's small cell or well differentiated neuroendocrine, hormone therapies have been tied to that because they affect the endocrine system.

Even more than that, and Mrs. Karbiwnyk wasn't told about this, if you recall from Dr. Thomas's testimony, when a person drinks alcohol and receives endocrine therapy, hormone therapy,

http://legacy.library.ucsf.edu/tid/zjr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

the risk from the hormone therapy goes from the level of 4 to 12. She wasn't told about that but that in fact is the case. This combination can account for both of her cancers because both of them arose in the endocrine system.

Then there's the question of family genetics. As you were told, whether or not a person smokes, if a person has a significant history of cancer in his or her family, his risk of lung cancer can be 5 to 10 times that of other

people, that's whether or not they smoke. Now, Mrs. Karbiwnyk -- every relative who we know of Mrs. Karbiwnyk's had cancer, five on her mother's side; she doesn't know the health of anyone on her father's side. And none of those cancers was related to smoking. Leukemia, breast cancer, stomach cancer, none by any standard, as you've heard, was related to smoking.

In fact, you may recall me talking a lot about Dr. Roggli, who was their first witness. It's a long time ago. But you may recall when he took the stand the plaintiffs had him testify that no one in Mrs. Karbiwnyk's family ever had cancer. I don't know if you remember that. In his first testimony on direct he said nobody in the family ever had cancer, and then when we presented him with Mrs. Karbiwnyk's own testimony and medical records, he admitted, he agreed, he acknowledged that everybody in the family who there were records of had had cancer.

This is an extraordinary family history, and Mrs. Karbiwnyk is extraordinary because almost no one gets two cancers in two different sites and of two different types. Dr. Roggli said only 2 or 3 percent of the people who ever get cancer

ever have two cancers. I believe that includes skin cancer. But this is an extraordinary story.

Now, here's the smoking history. The green is Reynolds. If you recall the smoking history, Mrs. Karbiwnyk smoked Pall Malls and Lucky Strikes, manufactured by American Tobacco, for the first three years. Then she smoked Winston with an alternate of Marlboro until 1976 or '77. Then she smoked Marlboro for a period of about a year; she didn't recall the exact time. That's made by Philip Morris. And then she smoked Salem Lights until February 1984 when she stopped permanently the only time she ever tried to stop.

Now, look at that chart and you'll see something else. And by the way, before I go to that, I want to point out a little bit more about the smoking history and I'll return to this.

You've heard a lot of testimony about the extent to which the risk of lung cancer, the numerical risk of lung cancer, declines when people stop smoking. Dr. Thomas detangled that but I'd like to go back over it a little bit

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Support provided by the Industry Documents Library: http://industrydocuments.ucsf.edu/docs/zqxl0001

more. If we could put up the Pare quote. Remember when Dr. Feingold was on the stand and he said the world's foremost expert on lung

cancer was his teacher in Canada, Pare? This is Dr. Pare's textbook. We read it to Dr. Feingold. "After about 10 to 13 years the risk of lung cancer approximates that of individuals who never smoked." That doesn't mean that they can't get lung cancer. It means they get it at the same rate of people who never smoked at all.

Now, the AMA has taken out ads. This is from the American Medical Journal in 1991 and it says American Medical Association. I'm going to have to circulate it, I think. It just can't be read up there. "Within ten years your risk of dying of lung cancer drops to the level of a nonsmoker." That's the American Medical Association's official position.

So what about these other studies or the other testimony about risk not declining quite that much? Everybody agrees that it declines. What about the testimony that it doesn't decline that much? Well, Dr. Thomas straightened that out for you when he was talking about that logarithmic scale. As people get older, their risk of lung cancer increases, whether they smoke or not. The older you are, the greater the risk.

On this Denmark-Sweden chart that we saw, you can see that. 35 to 39, there's almost no risk. Look at how much more the risk is -- this is the same country and these are -- these are actually Denmark; these are Sweden. Every five years the risk almost doubles, and as you get older your risk of lung cancer increases whether you smoke or not. Well, if you stop smoking for ten years or you stop smoking for 15 years, your risk, your numerical risk, declines. Of course it doesn't decline to where it was before because you're older and that's why there's a difference in those numbers.

But every study, every study that compares people at the same age has found that the risk of lung cancer -- as Dr. Thomas testified to, the risk of lung cancer declines to that of a level of a nonsmoker or just above after the period of time in which Mrs. Karbiwnyk had stopped smoking. And those are not based upon incidents when people are diagnosed with lung cancer but on when they die. Mrs. Karbiwnyk has been 14 years since she stopped smoking, and on those charts, on those tables, she would be in the 14-year column, not even in the 12. So okay, that deals

with the smoking history and the reduced risk

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

when people stop smoking. But look at this.
Do you recall Dr. Roggli's and Dr. Feingold's testimony about when the cancer started? They both said that Mrs. Karbiwnyk did not have cancer when she stopped smoking. She didn't have a single cancer cell in her body. Dr. Feingold put the onset of cancer at about one or two years before Mrs. Karbiwnyk was diagnosed with it. Dr. Roggli said it could have been five years before, but he said -- and I think we have it on a board here. He said very clearly that -- oh, we've got it on a big one. Okay. He said very, very clearly she didn't have lung cancer when she stopped smoking and he said even more. This is Dr. Roggli's testimony.
"By the way, you said earlier in response to direct testimony that Mrs. Karbiwnyk didn't have cancer when she stopped smoking; isn't that correct?"
He answered: "I think that she -- in all likelihood that the single cancer cell that eventually grew to be the lung cancer had not made the final change to malignancy, to cancer, at that time.

"In other words, in plain language, she didn't have cancer when she stopped smoking."
And he said, "The way we understand and define cancer, I think that's true.
"QUESTION: She didn't have cancer the next year, probably didn't have cancer five years later, correct?
"ANSWER: Somewhere in the time after five years, five years after she stopped smoking, is when it started growing in all likelihood."
Final question: "You cannot say to a reasonable degree of medical likelihood that the thing that caused that last change was a Winston or Salem Light; is that correct?
"That's correct."
That's their witness. That's Dr. Roggli. He said that whatever it was that turned that cell to cancer was not a Winston, was not a Salem Light.
Now, the plaintiffs have talked about earlier cellular changes as a means of getting around it, but that's speculative evidence. It was demonstrated as clearly as could be. Remember Dr. Roggli came up here with a video about p53 genes and then I asked him some

questions about the video, and he said, "Well, it's true. Not everybody who smokes has a modification of the p53 gene and the modification of that gene and the cataras gene are tied to a different form of lung cancer called adenocarcinoma. And there's a test to see if somebody had it.
You were told in closing argument by the

http://legacy.library.ucsf.edu/tid/zjr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

plaintiff that there was no test. Let's put this up on the board. Here's Dr. Roggli's testimony.

"Have you tested Mrs. Karbiwnyk to see if she has a p53?

"No I have not.

"How is that done?

"You can do it. You can do so chemically by doing special stains on the blocks of tumors. You can also do it at a molecular biopsy laboratory using the western blocks, northern blocks, and so forth."

They have the burden of proof. If they want to make an argument that her p53 genes were damaged, they could test for it. They never did.

Now, even apart from that, even apart from the convincing proof by the plaintiff's own case

that Mrs. Karbiwnyk didn't have cancer when she stopped smoking and that it was not a Winston or a Salem Light that caused that cancer to start, that applies to any kind of lung cancer, any cell type, but Mrs. Karbiwnyk didn't even have the cell type of cancer that's associated with smoking.

In other words, if her smoking line extended here like the other risk factors in her life, like the other potential causes in her life, it still could not be shown, would not be shown, that her smoking, her personal smoking, was the cause of that cancer.

Remember Dr. Gould, very distinguished man? We put up the number of countries that he'd been asked to lecture in. We put up the number of universities where he'd been asked to lecture. He's written 200 articles in peer-reviewed journals. He's an editor of peer-reviewed journals. He's a peer reviewer all the way up to the National Academy of Sciences at every level.

When Dr. Gould testified he told you that he's devoted a very substantial part of his life to figuring out why there are some people who are diagnosed with small-cell cancer who live a long

time and others, the great majority, who die immediately. And he saw that there were two patterns in the clinical records, and you've heard the term clinical records. It just means in the way they presented themselves physically at the time when they were -- when they first went to the doctor.

Some people come in -- most people come in really sick. They've lost 20 pounds; they have high fevers; they have no appetite; they can't think clearly. Others, very few, present in good health. Now, remember how Mrs. Karbiwnyk went to her doctor when she was sick after she had inhaled some fumes from a bathroom cleaner, Tilex? She went to her doctor because she had a

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

cough for about three or four weeks that didn't go away? She was running; she was in perfect health. She described herself as being in perfect health.

And when she took the stand she said at that time she was in perfect health. In fact, she said the two weeks after she went there she broke her ankle running. She was hardly this withered person with high fever who appeared to be on the verge of death that a small-cell cancer patient

normally is. But Dr. Gould said it wasn't enough to look at the -- at just the way people presented themselves. He wanted to see if the pathological slides seen under the microscope would look different for these two kinds of people.

And so he ran studies, what were called double blind studies where people -- where the doctors who were viewing it didn't know which slide they were looking at and where it was reviewed by more than one doctor, and he found that the slides of those people who live a long time and don't present that way look different than the pathological slides of the people who have small cell that kills them fast. He showed you, and I can't begin to try to show you again, what the slides looked like, but if you remember, one big difference was they had nuclei, they had prominent spots in the middle and that separated them.

Now, Dr. Gould has testified four times in his life. He has spoken at 35 universities and in 40 countries, but he's testified four times. And he came here to testify that Mrs. Karbiwnyk had the kind of lung cancer, the well

differentiated neuroendocrine, that wouldn't be associated with smoking even if her smoking had continued and even if she didn't have the other risk factors. And he based that on his numerical studies which -- there were three of them. One had one person was a smoker -- was a nonsmoker, 11 were smokers. Another one had more nonsmokers than smokers.

When he added up the three studies, 58 percent of the people who had that kind of cancer were smokers, 42 percent were nonsmokers. That's about the same as the population as a whole. At that time, not much different, so he -- based on that, he and Dr. Thomas, who you saw who's also a pathologist as well as a toxicologist, determined that even among active smokers, two-pack-a-day, three-pack-a-day smokers, it makes no difference. If they have that kind of cancer, that kind of cancer isn't associated with smoking. But Mrs. Karbiwnyk wasn't an active smoker. She had stopped smoking years before she had the first cancer cell in her body.

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/zqxl0001

23 Now, I told you and the judge will tell you
24 that she must meet the but-for test. They must
25 prove that without the Winston and Salem Light

1 cigarettes, she never would have gotten the
2 cancer. That's their burden of proof. It is
3 impossible for them to meet that burden with this
4 medical history and with the testimony of Dr.
5 Roggli himself that he cannot say to a reasonable
6 degree of medical likelihood that the thing that
7 caused that change was a Winston or Salem Light,
8 the last change was a Winston or Salem Light. He
9 can't do it.
10 All right. I told you earlier that they not
11 only have to prove that the Winstons or Salem
12 Lights were the legal cause of Mrs. Karbiwnyk's
13 cancer, but they have to prove that it was a
14 defect in the Winston or Salem Lights that was
15 the legal cause. It's not enough for them to
16 simply say it was caused by it, and they can't,
17 but they have to show that it came because of a
18 lack of warning or because of a design defect.
19 They haven't met that either.
20 I'm going to go into that in some detail,
21 but first I want to talk to you about two
22 witnesses whose testimony bears on the next
23 questions that we're going to address. One is
24 Dr. Feingold, and the other is Dr. Townsend, and
25 I want to talk to you about some things that I

1 think this case is not about.
2 Much of the plaintiff's case, as we all
3 know, came in through Dr. Feingold. He's the
4 fellow who interpreted the Reynolds documents
5 that Mr. Wilner has placed before you here. He's
6 the fellow who came in here and made most of the
7 accusations against Reynolds. His testimony by
8 far was the longest in the case, certainly of any
9 of the plaintiff's witnesses.
10 Now, you heard that Dr. Feingold and Mr.
11 Wilner have worked together for many, many years,
12 since the mid 1980s. You heard that they brought
13 business to each other. Dr. Feingold would send
14 out solicitation letters for Mr. Wilner; Mr.
15 Wilner would give millions of dollars' worth of
16 business to Dr. Feingold.
17 You heard that 1992 or earlier, Dr. Feingold
18 and Mr. Wilner, sitting around their kitchen
19 tables, decided to bring lawsuits against
20 cigarette companies like the lawsuit that we have
21 today. Mrs. Karbiwnyk wasn't even in their
22 imaginations at that time. They had never met
23 her. They didn't know anything about her or her
24 case. They never met her until Mrs. Karbiwnyk
25 answered one of their ads.

1 And, in fact, Dr. Feingold, who's never

http://legacy.library.ucsf.edu/tid/zjr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

written on any of these subjects, never written any peer review, isn't a pathologist so couldn't be here to diagnose a slide, whose only job as a doctor, principal job as a doctor, is to do workups of people in his office after performing examinations, never even examined Mrs. Karbiwnyk before he took the stand. He never even met her, even though he was on this case for a year.

Well, you heard also that Dr. Feingold, with Mr. Wilner, had worked for many years in asbestos litigation. That's where most of their business came from. And I don't want you to get the impression, as you might have when Mr. Wilner had, I think, a funny remark in the middle of the trial, that I take -- that I in any way criticize either Mr. Wilner or Dr. Feingold for representing asbestos companies. In our legal system everybody needs representation and it's honorable to do so. No one is saying anything to the contrary.

What I have a problem with, and what I tried to bring out, is a certain flexibility in testimony, where a person changes his testimony depending upon who he's testifying for and where

the testimony changes to match the interests of the client of the moment. In asbestos litigation, where Dr. Feingold has sought to keep liability away from the asbestos companies by saying that cigarettes cause the disease and the smoker is responsible for it -- and that's been his consistent testimony -- he has testified up to and including the Cold case in 1992, the last time he testified on this subject in an asbestos case, that cigarettes are not addictive.

For tobacco plaintiffs, where it's in his interest to say that the plaintiff was addicted, he testifies that cigarettes are addictive. And do you recall in his testimony that I had asked him at a deposition when he came to the conclusion that cigarettes are addictive and made every sign of addiction and he said it was in 1988 when he read the surgeon general's report at the very latest? In 1992 for an asbestos company he was testifying that the surgeon general in 1988 was wrong. That was his testimony in the Cold case.

For the asbestos client he says ten years after stopping smoking, the risk is reduced to the level of the nonsmoker. He testified to that

in 1987 and in December 1993 after he read the article that he says he relies on in this case. He said he read it in February 1993 by Halper. Here he says the risk doesn't go down.

This one is unbelievable. For the asbestos client he said he was not an expert on internal company documents and never reviews them. That's all he was doing here, reviewing Reynolds

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

documents and putting his spin on them. And let me see if we have that chart. Do we have the big chart?

Here, ladies and gentlemen -- it was read to you during trial. Here is what Dr. Feingold, in a case involving Mr. Wilner, testified in 1994 on behalf of his asbestos client. "I have no expertise or ability to assess what companies did or knew. I know what the medical literature contained so I would like to confine myself to what I know and what I can assess. I think that the medical knowledge comes from the literature and not the companies." And in 2,000 cases that he worked on, he never reviewed a single asbestos company document.

In the asbestos cases he said that the surgeon general's report on asbestos was wrong;

in cigarette cases, the surgeon general's report on smoking is right. In asbestos cases he said association doesn't prove cause. The fact that asbestos workers had lung cancer rates significantly higher than the rest of the population doesn't prove cause. In fact he said inhalation experiments don't prove cause. Asbestos -- if you recall, asbestos, when inhaled into the lungs of rats and mice, produces tumors in the rats and mice, something that can't be produced with cigarette smoke through all the experiments that have been tried. But in the cigarette cases he says association proves cause.

We don't question him, we don't criticize him for representing an asbestos client. Our criticism is for the variability in testimony depending upon who the client is.

And, ladies and gentlemen, compare our witnesses. We presented six witnesses to you. We presented Dr. Townsend over here, who I'll be discussing in a minute, who has written extensively in peer-reviewed publications, who has participated in many government conferences, who has a long track record, a long record of

writing and speaking that can be used to impeach him if he said something different some other time.

Think of Dr. Gould, who's written over 200 articles in the peer-reviewed press and who's spoken all over the world. Think of Dr. Thomas, who's written many dozens of articles in the peer-reviewed press, has edited them, has written editorials, has spoken at the National Science Foundation and all over Washington in the major environmental groups that he's participated in.

Think of Dr. Balson, who's written dozens of works in the peer-reviewed press and has edited them. All of those witnesses have -- and Dr. Wecker. All of those witnesses -- and Dr. Ford,

http://legacy.library.ucsf.edu/tid/zjr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

all of them have written extensively, all of them have spoken extensively, all of them have been deposed. And in this entire trial -- think back. In this entire trial, there wasn't a single time, despite all these people have written and said, despite all their depositions, despite the fact that they've appeared in lawsuits, some of them on behalf of other companies and other matters -- there's not a single time when Mr. Wilner was able to say but in that other case you said this

or in your book you said that or in your publication you said that.

There was not a single time that they said something different here than they had said in the past because their testimony is their testimony. It is not shaped for the client of the moment. These are very eminent men in their fields, top men in their fields, and they were testifying only in their fields. Historian in history, toxicologist in toxicology, statistician in statistics.

Now, ladies and gentlemen, Dr. Feingold's role, as I told you, was in part to interpret Reynolds documents, so he had the Teague '53 memo. Remember that? That was the memo in which Dr. Teague had said that there were a number of studies that showed a strong link between smoking and lung cancer. Dr. Feingold took the stand and said this proves internal company research, that they had found a link between smoking and lung cancer.

When Dr. Townsend took the stand, we were able to tell you what that document was about. Dr. Teague was a young scientist who was sent to the library at Bowman Gray Medical School and did

a book report, and that was an appropriate thing for Reynolds to be doing at the time but that's all that memo was. And then he testified to the '62 Rodgman memo, which you saw a little bit earlier today. And that was the one where they said that -- where Rodgman had said that he had found a number of chemicals, PAHs, in smoke, and it spoke about publication. And on the face of that document, it contains what could be some troubling passages, passages that are easily understood if you just go to the literature, because as Dr. Rodgman said when he took the stand, every single one of those has been published. Some have been published before, some were published about that time by R. J. Reynolds.

In its entire history, Reynolds has not found a single chemical in cigarette smoke that it has not made public, in its entire history. In fact of the 4800 chemicals that have been found in cigarette smoke, Reynolds discovered about half of them, and it's made them public.

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Digitized by the Legacy Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/zqxl0001

Ladies and gentlemen, if you recall at the beginning of the trial Dr. Roggli took the stand and had seen the identical set of documents that

Dr. Feingold had, the same sets of documents that the plaintiff's lawyers have put together in those books. And Dr. Roggli, who has published, said there was not a single document that if published at an earlier time would have substantially affected the medical community.

But there's more. There's no evidence that any of these documents that the plaintiffs are trying to build some case out of by inference on inference were followed at the company. Dr. Townsend, as you saw, as you heard, told you that Reynolds now has 75 Ph.D.s and about 55 master's -- people with master's degrees in its R&D department, plus hundreds of others; at one time they had more.

And they're all encouraged to think, and they're all encouraged to write, and they're all encouraged to be free in their thoughts. And they write a lot, and they think a lot, and sometimes they say some things that are goofy, and sometimes they say some things that are wrong. Sometimes they say some things, when they're writing to each other, that are opposed to company policy.

Remember in opening statement I said how do

you sort that out? How do you sort it all out? You look at what happened, you look at what they did. And I said we're going to put on the stand the head of research and development of the company and you'll get a chance to hear his testimony, to assess the company, and to assess him.

And let me just say with regard to Dr. Townsend that there's nothing that I can say that can convince you of his sincerity and honesty if you didn't believe it when you saw him on the stand. There's nothing that I can say that can convince you of his dedication and the dedication of the work of the Reynolds' scientists if you didn't see that on the stand. But I think his testimony in that regard, and I'll be going into it in greater detail in a minute, was as convincing as could be.

Now, we put on Dr. Townsend for a full day. He was our longest witness. He is, after all, the head of research and development at the company. He's the only person in this case who really understands what those documents are. He knew the scientists. He knew what their relevant -- what the relevance of those documents were,

and he understood their context.

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/zqxl0001

I asked him about a couple of those documents. Remember I asked him about the Teague document, for example, the Teague document that had -- that had that kind of weird formula, P = (H + G) - (C + R). I asked him if that's a formula that's followed at Reynolds, and I asked him if Reynolds has limited its tar content or nicotine content, I should say, to 1.3 milligrams as was suggested.

And what you heard, what Dr. Townsend told you was first of all the products that Dr. Teague is talking about, these sugar products and things with nicotine, were never designed, were never marketed, were never considered by the company. But this is a formula that came out of the -- out of taking a course at the business school in North Carolina, like a book report, and that Dr. Teague did not have a role in designing the cigarettes at the time.

And if you look -- if you look at the chart which I'll be coming to in greater detail later on the reduction of tar and nicotine contents in Reynolds cigarettes after the time when Dr. Teague wrote that memo -- this is the tar level;

let me get out the nicotine level.

If you look at that level, the average level went well below 1.3. Never mind that there were no products that went below it; the average level went below it. And Reynolds continued to work for lower and lower average tar and nicotine numbers. Here are the sales weighted numbers. Here's the nicotine number. Here's 1.3. He didn't hold it at 1.3, and the lowest ones went down to almost zero as the technology was developed in order to be able to do it.

But here, I must say, is what most bothers me. Dr. Townsend was on the stand, as I say, for a day, more than a day. We put him on in the afternoon one day and then almost a full day the next. The plaintiffs cross-examined our witnesses endlessly. We put on Dr. Thomas for an hour and a half, Dr. Thomas, our toxicologist, and they cross-examined him for three-and-a-half hours. They cross-examined him about Reynolds documents that he had never seen, and he couldn't try to put them in context or anything like that.

They cross-examined Dr. Wecker about Reynolds' internal documents that he had never

seen and that would have nothing to do with him. They cross-examined all of our witnesses about Reynolds' internal documents that had nothing to do with them except for one man. The one guy who they were too scared to ask about those documents was Dr. Townsend right over here. The one person who they make all these accusations about, they told us that night they don't have any more

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Document hosted at http://www.industrydocuments.ucsf.edu/docs/zqxl0001

questions for Dr. Townsend. They never asked him a single question about those documents. They asked those questions of every other witness, every witness who knew nothing about the documents. They asked nothing of Dr. Townsend.

Did you hear them asking about the biological research division of Dr. Townsend? No. Did you hear them asking about project Hippo of Dr. Townsend? Dr. Townsend would have told you, as you heard the other day, the project Hippo documents were never in Reynolds' files.

MR. WILNER: Object to what the witness would have said. If he wasn't asked, he never testified to that. That's improper.

THE COURT: Sustained.

MR. GROSSMAN: Did you hear them ask him about that? Did you ever hear them ask him about

project Hippo? Did you ever hear them ask about the BRD? Did you ever hear them ask him about the Teague documents or the Rodgman documents? Of course not.

If you're going -- in our system, in our basic system of justice, we have a right to be faced by our accusers. It's embraced in the Seventh Amendment to the Constitution. If they had accusations to make, they ought to make them to the man who can answer them. There's no excuse for that, but I think there's an explanation, and I think you know what the explanation is.

Let me turn for a minute, by the way, to the BRD, what the testimony was about that, and those Hippo documents. The biological research division of R. J. Reynolds was opened in 1967, as you heard both from Dr. Roggli and Dr. Thomas, when Reynolds was considering buying subsidiaries in starch, chemicals, and pharmaceuticals, and it was open primarily for that purpose. It also did some testing on equipment that was used for animal inhalation experiments with cigarettes. That was a small amount.

But the purpose of those tests was to test

the equipment and to test the way that they go about it. It was what Dr. Thomas referred to as range-finding tests. Range-finding tests are used in all industries, in all companies. As Dr. Thomas said they did it at Siba-Geigy when he was there and they do it at companies that he consults with. That's normal.

In uncontrolled experiments -- that is, they didn't have one group of 30 rabbits here and another group of 30 rabbits there and the difference between them was whether they had smoke inhaled or not. In uncontrolled experiments, because they were just testing methods and equipment, two or three animals developed emphysema.

http://legacy.library.ucsf.edu/tid/zjt07a00/pdf Digitized by the Legacy Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/zqxl0001

Now, is emphysema relevant to this case, first of all? Did you hear any evidence that Mrs. Karbiwnyk had emphysema? Leave that aside for a minute. Two or three animals developed emphysema after they had bronchitis and pneumonia. And these were animals that had had tracheotomies, that had received the smoke through incisions in their neck and pipes that were stuck down into their lungs.

After the animals died -- and some through

the nose. After the animals died a veterinarian was called in, as you heard in the Roggli testimony, and he determined that the emphysema was caused by bronchopneumonia or bronchitis. In any event, Dr. Thomas, who was president of the American Toxicological Association, and nobody should know this better than he, said the work wasn't publishable.

It wasn't publishable for many, many reasons, and the first was these were uncontrolled experiments. Second was they were intended to be range-finding experiments. It was never intended to be publishable kind of research. Third, totally apart from that -- well, let me tell you what Dr. Roggli said because he was the first witness and you may have forgotten it.

"In any scientific experiment it would be expected that controlled or controlled environments would be conducted, is that correct, certainly experimental conditions with animals?"

Dr. Roggli: "Yes. Of course there are differences between animals so the only thing that you can do is control for as many different variables as you can consider, and that's the

approach in the scientific method.

"QUESTION: Every animal itself is different, not just the species are different, and that's one of the things that you have to consider in interpreting the results?

"Sure.

"But certainly you need to have controls."

His answer: "To have a publishable, final conclusion, that is correct."

And then he said that the BRD work was not publishable. Can you put that up?

"Well, have you read the work dealing specifically with rabbits?

"ANSWER: I have read what was provided to me in the documents which I provided to R. J. Reynolds" -- should be from.

"Well the pathologist who was called in, the veterinary pathologist who was called in, concluded that the emphysema was caused by (inaudible); is that correct?

"That may be the case.

"Now, as you said, these were not controlled

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

23 experiments. They were not set up for
24 publication as a publishable experiment.
25 "ANSWER: As they were done up until

1 (inaudible), they probably would not have been
2 publishable as they were."
3 That's their witness. This is not in
4 controversy. These were not publishable
5 findings. There is no evidence to the contrary.
6 And then there's the question of project
7 Hippo. Those are British American Tobacco
8 Company documents that, as you heard during the
9 testimony of Dr. Balson, were never in the
10 Reynolds files. I'll come in a moment to show
11 how hard Reynolds works to preserve its files.
12 They were never in the Reynolds files, have
13 nothing to do with this case, have nothing to do
14 with Reynolds, and were not published.
15 Remember when Dr. Balson was here? He has
16 conducted tests of the same kind himself, exactly
17 the same kind of tests. In fact, he was
18 conducting them in 1963 and 1964, using things
19 other than nicotine for other purposes, but
20 exactly the same kinds of tests. And he is an
21 editor and a peer reviewer on the behavioral
22 journals that would publish that kind of thing.
23 And he said there is not a journal, a reputable
24 journal in the world that would have published
25 those. First of all, a tentative hypothesis is a

1 guess. Secondly, they were not well conducted.
2 Third, they weren't controlled. These simply
3 weren't things that were publishable.
4 Now -- and I'll come back to this in a
5 moment -- the public health community, especially
6 in the last ten years, has -- is very focused and
7 is, as Dr. Balson, who's a member of the public
8 health community says, an advocacy group, and
9 many of the things that they say and do are for
10 advocacy purposes, as Dr. Balson testified. But
11 leaving aside statements of advocates in regard
12 to these things and the rest, the fact of the
13 matter is the BAT documents have nothing to do
14 with Reynolds. They were unpublishable and they
15 have nothing to do with this case.
16 So there were all of these -- all these
17 allegations made, and Dr. Feingold was the one
18 who was here primarily to make those allegations
19 through Reynolds documents, Reynolds documents
20 that he couldn't put in context, and this is from
21 the man who, as you saw a moment ago, never
22 testified as to documents in asbestos cases and
23 said that he wasn't an expert to do so and said
24 that the way you look at medical literature is to
25 look at the medical literature and not what is

1 done inside the companies. That's the guy.

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Digitized by http://www.industrydocuments.ucsf.edu/docs/zqxl0001

But to me the most outrageous moment of this trial -- and I don't want to overuse that word, but I think it was -- was that moment when I asked Dr. Feingold on the stand about a study that he had conducted and destroyed on addiction. Remember he said he had conducted a -- he had conducted an experiment on addiction at his hospital, at his clinic, at a smoking reduction clinic. He had made computations on it but he didn't put it on Microfilm and he threw it out.

At that point out of noplace he held up in his hand a list, and he said, and I'll quote it: "I have before me a list of RJR research department reports from 1954 through 1991 which contain, I don't know, maybe hundreds of destroyed documents listing indications of the documents that were destroyed." So we asked him for the list, and as Dr. Townsend told you on the stand, it took five days to get that list from him.

We asked for the list because, as Dr. Townsend said, Reynolds has gone to unbelievable lengths to preserve every document that it's ever

had. Every R&D memo gets a number and there's a way to find out. So when we got the list, we sent down to Winston-Salem and we said, "Start in the back of the list, the oldest documents first, and let's see what we can get." And remember in the middle of the trial at lunchtime, a courier came up from Winston-Salem with the first two years of documents, 1954/1955, every single document?

Now, the list said "destroyed" on the upper right, because as Dr. Townsend told you, it was somebody's personal files. They were thrown out, as we all throw out our personal files, knowing of course that the central library preserves every single document of the R&D department, and that's why we were so certain that if we got that list, we'd produce the documents, as we did. Nobody ever asked of course because the purpose of the list was not to find out the truth, I submit. The purpose of the list was to make accusations, and that's what this case has been about, accusations, accusations largely at David Townsend and the people who work with him.

A case has to be won by a plaintiff on the basis of proof, not accusations, and no matter

how many accusations you string together, that doesn't make proof.

Ladies and gentlemen, you also saw a good deal about advertising in this case. It was nice to see Dick Van Dyke again when he was young. It was nice to see I Love Lucy again when she was alive, but Philip Morris cigarettes on I Love Lucy and Kent cigarettes on Dick Van Dyke have

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Digitized by the Legacy Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/zqxl0001

nothing to do with this case. They aren't even made by Reynolds.

Even more importantly, Mrs. Karbiwnyk herself testified too that advertising never had anything to do with her smoking decisions, remember? She didn't start because of advertising; she didn't switch brands because of advertising. In fact, after Mrs. Karbiwnyk responded to the lawyers' ads, the plaintiff's lawyers showed her the same ads that they showed you. They showed you those ads to see if they could get a rise out of you. They did the same thing with Mrs. Karbiwnyk, and she said they didn't mean anything to her. Remember her testimony? They didn't mean anything to her.

So since the plaintiff's lawyers were unsuccessful trying to convince her to testify

about that, they put the ads in front of you hoping that they'd get a rise out of you. They have nothing do with this case, nothing at all.

And the Flintstones ads, I think the reason that they put the Flintstones ads in front of you was to suggest that there was youth marketing going on. I don't know how many of you remember, but the Flintstones in its first year, actually first two years, was advertised as an adult comedy in cartoon form, the first one on TV. They made a big stink about it. It was supposed to be the Honeymooners in cartoon form, and it was advertised that way. And we have the ads that were read into evidence, and when they were read, you may not have understood why we were saying that. Could you blow it up, Steve?

Here's from the local newspaper: "Flintstones Premier, the Flintstone Flyer. Parents will be delighted to learn that the Huck Hound-Quick Draw McGraw team has finally created a series they admit is for adults. Tonight's opener," etc.

Let's have the next one, also from the Times-Union. Flintstones -- no, this one's the New York Times: "Flintstones. Tonight the

first, the freshest, the funniest comedy of its kind. An adult comedy in cartoon form relating the very modern muddles of some very prehistoric neighbors." And also from the Times-Union: "Flintstones, ABC, new series, The Flintstone Flyer. Adult oriented cartoon show deals with a night at the opera." So I hope you understand what the Flintstones was all about.

Now, Mrs. Karbiwnyk didn't start smoking because of ads; she didn't switch brands because of ads; she didn't stay smoking because of ads. That was her consistent testimony.

And then there's the question of the CTR and the TIRC and the frank statement. The plaintiffs have been trying to tell you that there was a

http://legacy.library.ucsf.edu/tid/zjt07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/zqxl0001

great conspiracy. The frank statement told the public that they could go on smoking because the cause hadn't been found, and the industry was putting the Tobacco Industry Research Committee, later called the CTR, the Council for Tobacco Research, on the project, and until the CTR reported on whether cigarette smoking caused cancer, go on smoking. That's not what the frank statement said, but that's basically the gist of their argument.

Well, three things. First of all, the CTR did some terrific work. All it did was fund work done by scientists that was published. Now, as you heard, there was some great work, some of which ended in Nobel prizes, funded by the CTR. That's fine. But using the CTR as some cover-up so that the public would keep on smoking, is there anybody who's ever heard of the CTR? We put on witnesses who hadn't heard of the CTR. Dr. Wecker was asked about the CTR; he never heard of it. And Mrs. Karbiwnyk never heard of it, and she never heard of the TIRC, and she never heard of the frank statement. Do I have it on a board? No. Okay. Well, that was her testimony, as you'll recall.

She also said most specifically that she never relied, never heard of a single cigarette company or anyone working on behalf of a cigarette company saying that cigarettes were unharmful and she never made her smoking decisions on that basis. That's the one that we have. I'm sorry.

"QUESTION: You never heard any cigarette company or anyone else say that cigarette smoking was safe or that it wasn't harmful; isn't that

correct?

"That's correct.

"And that was true both before you started smoking and after you started smoking; isn't that correct?

"Yeah."

So all these statements, half their case, has nothing to do with Mrs. Karbiwnyk, nothing at all. She never relied on those things. She doesn't recall them. That's not why she smoked, has nothing to do with her at all.

I'm about to turn to the warning claim, Your Honor. I think this would be a good time for the break.

THE COURT: All right. Ladies and gentlemen, you want to walk around a little? Just a short break. We'll be in recess for ten minutes.

(Recess from 1:15 to 1:30 p.m.)

http://legacy.library.ucsf.edu/tid/zjn07a00/pdf Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/zqxl0001